



California Sportfishing Protection Alliance

"An Advocate for Fisheries, Habitat and Water Quality"

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20 August 2006

Mr. Robert Schneider, Chairman
Ms. Pamela Creedon, Executive Officer
Mr. Jack DelConte
Ms. Wendy Wyels
Mr. Scott Kranhold
Regional Water Quality Control Board
Central Valley Region
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670-6144

VIA: Electronic Submission
Hardcopy if Requested

RE: Waste Discharge Requirements For Kautz Vineyards, Inc., Hay Station Ranch
Recycled Water Reuse Areas, Calaveras County

Dear Messrs Schneider, DelConte, Kranhold and Mesdames Creedon, Wyles:

The California Sportfishing Protection Alliance, Watershed Enforcers and San Joaquin Audubon (hereinafter "CSPA") has reviewed the Central Valley Regional Water Quality Control Board's (hereinafter "Regional Board") tentative Waste Discharge Requirements (hereinafter "Order" or "Permit") for the Kautz Vineyards, Inc., Hay Station Ranch Recycled Water Reuse Areas (hereinafter "Discharger") and has serious concerns regarding the Order. CSPA believes the Order is illegal and nonprotective and requests designated party status. Our comments are as follows:

1. Finding No. 8 shows that MDS recycled water quality does not consistently comply with recycled water limitations specified in Title 22. Please describe the compliance measures being taken in order to ensure that the recycled water complies with Title 22 requirements and does not pose a threat to the public.
2. Finding No. 11 states, "Prior to the Regional Board's adoption of WDRs Order No. 5-01-063 in March 2001 for Ironstone Vineyards, and WDR Order No. 5-00-264 for the MSD, Ironstone Vineyards used recycled water from MSD for vineyard frost control during the spring, as needed. However, the current WDRs for MSD prohibits the use of recycled water for frost control purposes because at the time the WDRs were adopted, the MSD was not treating wastewater to Title 22 tertiary 2.2 standards. In the summer 2003, MSD completed final upgrades to the WWTP to meet tertiary 2.2 standards and DHS the State Department of Health Services approved the use of recycled water for frost control. Therefore, this Order supercedes the Prohibition in WDRs Order No. 5-00-264 against using recycled water for frost control and allows the use of recycled water for frost

control at Hay Station Ranch, provided that wastewater meets the Title 22 tertiary standards.”

Finding No. 12 states, “Discharge Prohibition A.10 in WDR Order No. 5-00-264 for MSD states “*The discharge of reclaimed wastewater to Ironstone Vineyards between 30 November and 1 March of each year is prohibited.*” Because of the operational controls (i.e., setback requirements, grading, berms, etc), and practices and procedures (i.e., daily inspections) now used for applying recycled water to the reuse areas, this Order supercedes the Prohibition against using recycled water during the winter months, and allows recycled water to be used year round at Hay Station Ranch provided that the Discharger complies with the Discharge Prohibitions and Specification in this Order.” As discussed above, staff cannot revise Order No. 5-00-264 without opening the Order to public comment.

MSD is not listed as a Discharger in the tentative Order (see Finding No. 1 and the Hereby Ordered Section). The Regional Board cannot change limitations specified in Order No. 5-00-264 without opening this Order for public review and comment. While the listed Dischargers may have the ability to use recycled water for frost control under the tentative Order, in order for MSD to deliver the recycled water Order No. 5-00-264 must be revised or a Board resolution adopted modifying Order No. 4-00-264. In either case, the public must be afforded the legal review and comment period mandated by law.

3. Finding No. 47 indicates that the Discharger has submitted a Title 22 engineer report but fails to address if the report was determined to be complete. What were the comments, if any, that were made by DHS? Has DHS and staff determined that the report is complete? In accordance with the MOU between DHS and the State Board, recommendation by DHS regarding the Title 22 engineering report must be included in the Order and enforced by the Regional Boards. Please revise the tentative Order to reflect any recommendations made by DHS.

4. Finding No. 49 states, “The action to update WDRs for this existing facility is exempt from the provisions of the CEQA, in accordance Title 14, California Code of Regulations (CCR), Section 15301.” This statement is correct provided a CEQA document has been completed for Hay Station Ranch that addresses wastewater disposal using the cited recycled water system. The Regional Board may not adopt an Order until CEQA is completed. Our recent inquiry to the County indicates that they were not the lead agency on CEQA for this recycled water project. We understand that the Regional Board or MSD may have acted as the lead agency for CEQA. Kautz Vineyards began operations after 1989 and therefore does not predate CEQA. The vineyard has been expanded and modified over the years and so several CEQA documents may have been completed to address the expansion for wastewater disposal over the entire 180 acres. Please provide the CEQA documentation(s) that actually covers the “project” for the application of wastewater/recycled water at Hay Station Ranch.

5. There is no antidegradation analysis in the proposed Order. Conclusory, unsupported and undocumented statements cannot serve in lieu of a legally required antidegradation analysis.

The Fact Sheet states, “Resolution 68-16 is applied on a case-by-case, constituent-by-constituent basis in determining whether a certain degree of degradation can be justified. It is incumbent upon the Discharger to provide technical information for the Board to evaluate that fully characterizes:

- All waste constituents to be discharged;
- The background quality of the uppermost layer of the uppermost aquifer;
- The background quality of other waters that may be affected;
- The underlying hydrogeologic conditions;
- Waste treatment and control measures;
- How treatment and control measures are justified as best practicable treatment and control;
- The extent the discharge will impact the quality of each aquifer; and
- The expected degradation to water quality objectives.” Fact Sheet, pp. 2-3.

The Fact Sheet then admits that the discharge has been occurring for years and that, “[g]roundwater monitoring has never been conducted at the site and therefore, staff are unable to establish the most appropriate groundwater limits. In addition, certain aspects of waste treatment and control practices may not be justified as representative of best practicable treatment and control (BPTC).” It further acknowledges that, “[t]he Discharger is expected to identify, implement, and adhere to, BPTC as individual practices are reviewed and upgraded in this process. During this period, degradation may occur from certain constituents, but can never exceed water quality objectives (or background water quality should it exceed objectives) or cause nuisance.” Fact Sheet, p. 3.

In other words, staff doesn’t know background water quality, the appropriate effluent limits or whether BPTC is being applied but is proposing to allow some unknown level of degradation to occur justified by some unknown benefit on the assumption that the Discharger will do in the future what is was legally responsible to do before the permit was issued. This is a blatant violation of the state’s antidegradation policy.

State Board guidance for complying with antidegradation requirements is set forth in the Administrative Procedures Update 90-004 (APU 90-004). For example, the Fact Sheet must discuss:

- a. The water quality parameters and beneficial uses that will be affected by the project and the extent of the impact.
- a. The scientific rationale for determining that the proposed action will or will no lower water quality.

- b. A description of the alternative measures that were considered. There is no alternatives analysis.
- c. A description of the socioeconomic evaluation. This must include a comprehensive financial impact analysis evaluating the economic and social costs (tangible and intangible) compared to benefits. Among other requirements it must compare the baseline socioeconomic profile of the community with and without the project vis-à-vis the long and short-term socioeconomic impacts of maintaining existing water quality. And more.
- d. And finally, it must discuss the rationale for determining that the proposed action is or is not justified by socioeconomic considerations.

Clearly, conclusory statements that degradation of waters belonging to the people of the state is allowable because it provides some unknown benefit to a private party when that party has failed to conduct the required studies, documentation and determination of BPTC and the Board has failed to comply with the procedural requirements set forth in APU 90-004 cannot meet any legal test of compliance with the state's antidegradation policy.

6. The tentative Order fails to comport with Title 27 requirements. The Fact Sheet states, "Discharges of domestic sewage and treated effluent can be treated and controlled to a degree that will not result in unreasonable degradation of groundwater. For this reason, treatment and storage facilities associated with municipal wastewater treatment plants have been conditionally exempted from Title 27, except for the discharge to land of residual sludge and solid waste generated as part of the treatment process [section 20090(a) of Title 27]. The condition requires that the discharge be regulated by waste discharge requirements (WDRs), or that WDRs have been waived, and that the discharge not result in violation of any water quality objective in groundwater." Fact Sheet, p. 6.

However, the Discharger's blatant failure to adequately characterize groundwater quality and identify BPTC, coupled with staff's failure to conduct the legally required antidegradation analysis, makes a mockery of any exemption from Title 27 requirements. Title 27 does not allow degradation of groundwater quality.

Thank you for considering these comments. If you have questions or require clarification, please don't hesitate to contact us.

Sincerely,



Bill Jennings, Executive Director
California Sportfishing Protection Alliance